IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 819 of 2006

Mahendra Singh S/o Daulat Singh
R/o Raj Mahal Hotel, Compound,
Mallital, District Nainital.

…… Applicant

Versus

1. State of Uttaranchal
   through its District & Sessions Judge,
   Nainital
2. Chief Judicial Magistrate, Nainital.
   District Nainital.
3. Divisional Foresh Officer (D.F.O.)
   Nagar Palika Forest Range,
   Nainital Forest Department,
   Nainital

…….Respondents

Mr. Vikram Datt, Advocate for the applicant.
Mr. Amit Bhatt, A.G.A. for the respondent State.

Hon. Prafulla C. Pant, J.

Heard Mr. Vikram Datt, learned counsel for the applicant and Mr. Amit Bhatt, learned A.G.A. for the State.

2) This petition, moved under Section 482 of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the order dated 13.07.2006, passed by learned Sessions Judge, Nainital, whereby the order dated 17th June, 2006, passed by the Magistrate has been affirmed refusing the release of vehicle involved in the crime.

3) Brief facts of the case are that a Sirav (Capricorn Sumatransis), a wild animal, is said to have been killed by the accused Mahendra Singh (present petitioner) and others,

who were found taking said animal in his Maruti Van bearing registration No. U.A. 04/A 2434, along with the gun used in the crime. A crime No. 21 of 2006, under Section 9, 39 and 51 of the Wild Life (Prevention) Act, 1972 (hereinafter referred as the Act) was registered with police station Mallital, District Nainital, on the report of the forest authorities. There appears to be a confessional statement (paper No. 3 – A/ 20 in the lower court record) given by the accused. The vehicle and the dead animal along with the gun used in the crime were seized by the forest authorities.

4) Learned A.G.A. drew attention of this Court to sub-section (1) of Section 39 of aforesaid Act. Clause (d) of sub-section 1 of Section 39 of the aforesaid Act provides that every vehicle seized under the provisions of the Act, shall be the property of the State Government. Learned A.G.A. contended that the vehicle which is sought to be released by the petitioner cannot be said to be his property, nor can it be released in his favour. It is also contended by learned A.G.A that provisions contained in Section 39 of the Act has over- riding effect over other laws. In reply to this Mr. Vikram Datt, learned counsel for the petitioner submitted that the property would vest in the Government only after the accused (petitioner) is found guilty of the offence punishable under aforesaid Act. The plain reading of Sub-section (1) of Section 39, doesn't require conviction before the property can be said to have vested in Government. Assuming for a moment, that during the trial vehicle can be released by the court in exercise of powers under Section 451 of Cr.P.C., but on the merits also it doesn't appear to be a fit case in which the vehicle should be released in favour of the accused, as the vehicle was allegedly intercepted by

the forest officials not only with the wild animal of rare species but also with the gun, who himself was in the vehicle at the time when the forest officials intercepted the same. Apart from this, it is pointed out that the confessional statement of the petitioner was also recorded by the concerned forest officers.

5) In the circumstances, this Court is the view that the learned Magistrate and learned Sessions Judge have committed no error of law in refusing to release the vehicle, used in the crime, in favour of the accused. Accordingly, the petition under Section 482 of Cr.P.C. is dismissed.

(Prafulla C. Pant, J.)

Dt. October 27, 2006.
H. Negi